PRESIDING OFFICER'S DECISION (Mailed 5/24/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Irvine Apartment Management Company, Complainant, vs. Southern California Edison Company, Defendant.	Case 01-10-019 (Filed October 19, 2001)

Paul Kerkorian, Attorney at Law, for Irvine Apartment Management Company, complainant.
Michael D. Montoya, Attorney at Law, for Southern California Edison Company, defendant.

ORDER GRANTING COMPLAINT IN PART

1. Summary

Irvine Apartment Management Company (Irvine), which manages apartment complexes throughout California, alleges that it is entitled to be billed for electricity at a lower outdoor lighting tariff at seven of its properties. Southern California Edison Company (SCE) denies the allegation. This decision finds that Irvine has met its burden of showing that it is entitled to be billed at the lower outdoor lighting rate at two of the properties in question, but it has not met its burden of proof as to the other five properties.

2. Background

Irvine contends that it had certain accounts that serve dusk-to-dawn outdoor lighting loads together with incidental non-lighting loads, and that these accounts qualify for SCE's Outdoor Area Lighting Service rate (Schedule AL-1). SCE contends that the accounts do not meet the Schedule AL-1 tariff requirements.

The case went to hearing in Los Angeles on February 27, 2002. Irvine presented one witness to testify on his examination of electricity loads at the properties. SCE presented three witnesses to testify on the structure of the Schedule AL-1 tariff and on measurement of the electrical load at the properties at issue. The Commission received eight exhibits in evidence. Final briefs were filed on April 30, 2002, when the case was deemed submitted for Commission decision.

3. SCE's Tariffs

The parties agree that the principal issues of this case are governed by the interpretation of provisions of the Schedule AL-1 tariff. These provisions include the following:

> "APPLICABILITY
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> "Applicable to metered, controlled for dusk to dawn operation of outdoor area lighting for purposes other than street and highway lighting such as, but not limited to parking lots, pedestrian walkways, billboards, building exteriors, security, sports and recreation areas, monuments, decorative areas, and bus shelters."
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> "SPECIAL CONDITIONS
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> "4. Controlled Operation: Service under this schedule requires the control of lamps in a manner acceptable to the Utility so that lamps will not be lighted daily from dawn to dusk."

* * *

> "7. Incidental Loads: Incidental, non-lighting loads may be served under this schedule only where such connected loads do not exceed 15 percent of the customer's total connected load."

Also at issue was the method of determining "connected load." SCE's Rule 1 "Definitions" tariff defines that term as follows:

> "Connected Load: The sum of the rated capacities of all of the customer's equipment that can be connected to SCE's lines at any one time as more completely described in the rate schedules."

Finally, the parties also disagreed on the relevance of SCE's attempted amendment of Special Condition 7 of Schedule AL-1. The amendment was withdrawn but was later incorporated in SCE's filing of a new tariff, Schedule AL-2. The revised language for Special Condition 7 adds a final sentence not contained in Schedule AL-1 and reads as follows:

> "7. Incidental Loads: Incidental, non-lighting loads may be served under this schedule only where such connected loads do not exceed 15 percent of the customer's total connected load. Incidental Loads must also be controlled for dusk to dawn operation exclusively."

4. Positions of the Parties

Irvine presented its evidence through witness Michael Kerkorian, who with his brother Paul (the attorney for Irvine in this case) are partners in Utility Cost Management LLC (UCM). UCM reviews electricity charges for business and government utility customers to determine whether any of the charges are eligible for lower rates in the tariffs. The firm works on a contingency basis, retaining a percentage of the first year's savings on any lower rate that UCM is able to obtain for the customer. Irvine retained UCM in November 2000 to

review its accounts and, to date, Irvine has obtained AL-1 rates for approximately 80 accounts.

Kerkorian testified that the original complaint included 50 more accounts, based on what he said was SCE's earlier interpretation of Schedule AL-1 to permit "incidental non-lighting loads" of less than 15% of "usage" on a particular meter. When SCE agreed that the measure should be on "connected load" rather than "usage," Irvine withdrew 42 of the accounts where the incidental loads were for garage-door openers. While the electricity usage of garage-door openers is minimal, the rated capacities of these devices exceed 15% of connected load. During his testimony, Irvine withdrew one other account after SCE's witness showed that the account included service to a laundry room that was not included in the Irvine analysis.

Kerkorian stated that he and SCE personnel together had inspected the seven properties that remain at issue, and Kerkorian revisited two of them after receiving Edison's prepared testimony. All seven accounts serve dawn-to-dusk outdoor lighting for building exteriors, parking lots, walkways and landscaping. Each account also serves a 24-hour-a-day water pump and motor (the Raypac unit) that enables apartment residents to have on-demand hot water.

Kerkorian said that because of the hundreds of lights and other electrical devices served in these accounts, determining the rated capacity of each of these lights and devices is impractical. He used what he described as a more reliable way to measure the incidental non-lighting loads and total connected load for each account. First, he assigned wattage for each Raypac unit (typically 465 watts). He then multiplied the Raypac wattage by 24 hours to come up with a

kilowatt/per day average for uncontrolled load. He then assumed that all other load reflected in the total average per-day usage of the account was controlled lighting load. He compared what he determined to be controlled lighting load to the uncontrolled Raypac load to determine whether the incidental non-lighting load was less than 15% of connected load, as required by Special Condition 7. Using this method, Kerkorian testified that the incidental non-lighting load (the Raypac load) for each property ranged from 10% to 15% of total connected load.

Kerkorian said that he subsequently revisited two of the properties and physically counted each controlled lighting device and each incidental non-lighting device, along with the rated capacity of each. These calculations are set forth in Exhibit 8. He testified that this method of calculating the connected load supported his earlier computations using the rated capacity of the Raypac unit and the average usage of the lighting load. On cross-examination, Kerkorian acknowledged that he did not attempt to count the number of lights or their rated wattage at the five other accounts, but relied instead on actual usage on the meter and an understanding of what was connected to the meter.

SCE witness James Schichtl, supervisor of the rate design section of the utility's revenue and tariffs division, testified that street-lighting rates are designed with an assumption that they will be exclusive for off-peak usage. He said that the lower rates for this type of lighting reflect the lower costs of supplying energy in non-peak hours.

SCE witness Lisa Ornelas, program/contract manager in the utility's Regulatory Policy and Affairs Department, testified to her understanding of the streetlight tariffs. First, she said, by virtue of the "Applicability" section of

Schedule AL-1, the tariff applies only to lighting loads and only to loads controlled for dusk-to-dawn operation. She said that Special Condition 7 also requires dusk-to-dawn operation and refers to incidental non-illuminating lighting, like an exit sign or theater track lights.

Ornelas testified that Schedule AL-1 was implemented in May 1996. Advice Letter 1173 sought to revise the tariff (1) to provide that the customer (instead of the utility) would own the dusk-to-dawn control device, (2) to reduce the rate to reflect that ownership, and (3) to clarify that qualified incidental non-lighting loads must also be controlled for dusk-to-dawn operation. However, these changes were to go into effect on September 11, 1996. The Legislature in Assembly Bill 1890 froze SCE's rates as of June 10, 1996. In view of this, SCE was compelled to withdraw the amendment to Schedule AL-1 and, instead, filed the revised document as Schedule AL-2, intending to substitute AL-2 for AL-1 when the rate freeze was lifted.

In response to questions, Ornelas acknowledged that utility and customer ownership of control devices is not covered in the tariff, but was referenced in the advice letter filing that was withdrawn.

SCE witness Katherine Del Rio, a supervising field service representative, testified that she had visited each of the seven properties and measured the electricity loads by turning off breakers and timing the actual uncontrolled non-lighting load by counting the number of revolutions going through the meter. Using this method, she determined that the actual uncontrolled non-lighting load at each location exceeded 15% of an estimated total load, ranging from 21.6% to 45.56%. At one location, she inspected every electrical device she could locate to determine rated capacity, concluding that the percentage of uncontrolled load at that property was 28.18%. She stated that Kerkorian's method of measuring

connected load was prone to error because it relied on usage rather than the rated capacity of each device connected to meter.

On cross-examination, Del Rio did not dispute Kerkorian's counts at two of the properties, where he found higher lighting loads than Del Rio had found in her visits, although she questioned whether he had included buildings served by a different meter. She also admitted that her calculation of connected load at one property was less than the actual usage recorded for that property.

5. Discussion

As SCE correctly points out, Pub. Util. Code § 1702 places the burden on complainant to prove by a preponderance of evidence that the utility violated a law, rule, Commission order, or tariff in order to prevail on a complaint. Among other things, Irvine must show (1) that the incidental non-lighting load at each of the seven properties qualifies to be served under the Schedule AL-1 tariff, and (2) that the incidental non-lighting load at each of the locations does not exceed 15% of the total connected load.

5.1 Incidental Non-Lighting Load

SCE asserts that Schedule AL-1 is intended to require that all loads (both lighting and incidental non-lighting) be controlled for dusk-to-dawn operation. The testimony of its rate design witness confirms that street-lighting rates were designed assuming no on-peak usage. The withdrawn attempt to amend AL-1 to add a dusk-to-dawn provision to incidental non-lighting loads is further evidence of that intent.

However, as Irvine notes, the language of Schedule AL-1 is clear and unambiguous in stating that the limitation to dawn-to-dusk operation applies

only to lighting. Where tariff language is clear and unambiguous, there is no need to refer to the intent behind the tariff.[1] The Applicability Section of Schedule AL-1 states: "Applicable to metered, controlled for dusk to dawn operation *of outdoor area lighting* for purposes other than street and highway lighting…" Special Condition 4 states: "Service under this schedule requires control *of lamps* in a manner acceptable to the Utility so that *lamps* will not be lighted daily from dawn to dusk."

By contrast, the only condition for serving "incidental, *non-lighting* loads" contained in Schedule AL-1 is that such loads not exceed 15% of total connected load. (Special Condition 7.) It follows that the incidental non-lighting loads generated by Raypac units qualify under Schedule AL-1 if their use is incidental to the outdoor area lighting and does not exceed 15% of total connected load.

SCE argues that the Raypac units are not "incidental" to the outdoor area lighting because these heating units are not "connected to" or "related to" the outdoor lighting. As Irvine points out, however, the Raypac units are connected to and related to the lighting load because they receive service through the same meter and the same account and are physically connected by wiring. In its brief, SCE has abandoned the argument made by its witness at hearing that the incidental use must be one that provides some sort of illumination. That argument cannot stand in the face of the explicit language of Special Condition 7, referring to "incidental, *non-lighting* loads."

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[1] "If the language of a tariff is unambiguous, there is no room for construction and the provision must be applied in accordance with the literal meaning of the words used." *Rueben H. Donnelly Corp. v. Pacific Bell* (1991) 39 CPUC2d 209, 239. *See also, Ornelas v. Randolph* (1993) 4 Cal.4th 1095 (When statutory language is clear and unambiguous, there is no need to resort to construction, and courts should not indulge in it.)

Even if we were to give some credence to SCE's interpretation of Schedule AL-1, it would serve only to acknowledge an ambiguity in the tariff. This Commission has stated consistently that "ambiguous tariff provisions are to be construed strictly against a utility and any doubt resolved in favor of the customer." (*Carlton Hills School v. SDG&E* (1982) Cal. PUC LEXIS 1259; *Ellickson v. Gen. Tel. Co.*(1981) 6 CPUC2d 432.) As applied here, the tariff must be strictly construed against SCE so as to give Irvine discretion to include an incidental non-lighting use under Schedule AL-1 so long as that use does not exceed 15% of the total connected load.

5.2 Measuring 15% of Connected Load

Whether the incidental non-lighting loads here are within 15% of total connected load is an issue of fact over which both parties struggled. Irvine gauged total connected load by using a mix of Raypac unit ratings and average per-day usage as measured by a meter. SCE determined connected load by turning off breakers, isolating particular banks of lights and other devices, and putting a stopwatch to the meter for three minutes to count meter revolutions. Irvine's results showed non-lighting loads at 15% or less. SCE's results showed non-lighting loads in excess of 15% in all cases.

As Kerkorian stated at hearing, measuring connected load is simple if one is looking at a property where the only electrical unit is a water pump with a 50-horsepower motor. The connected load would be 50 horsepower. The measure becomes difficult is in situations like those here where apartment complexes may have hundreds or thousands of outdoor lights, and are served by multiple meters. Physically counting each of those lights and energy devices on a meter-by-meter basis is daunting. SCE's witness agreed that such an approach

is subject to error, since some lights are likely to be missed, some may have burned out, and some may be inaccessible.

Nevertheless, the definition of "connected load" is clear. It is "the sum of the rated capacities of all of the customer's equipment that can be connected to SCE's lines at any one time as more completely described in the rate schedules." There is no additional description in the Schedule AL-1 tariff. Accordingly, under the definition, connected load is determined by finding each light and each piece of equipment drawing power through a meter, determining the rated capacity of each, and adding the total.

On the record before us, the only unchallenged evidence of a physical count of every light and energy-drawing piece of equipment along with the rated capacity of each is the physical count conducted by Kerkorian at two of the properties in dispute. That evidence, presented in six pages of detail in Kerkorian's rebuttal testimony (Exhibit 8), involved properties at 164 Esplanade (SCE Account 3-000-0230-95) and at 184 Pergola (SCE Account 3-000-0231-05). In each case, these calculations show that the Raypac unit is within 15% of total connected load, with connected load determined as the sum of the rated capacities of all of the customer's equipment that can be connected to the line.

We find that Irvine has met its burden of proof in showing that incidental non-lighting loads at 164 Esplanade and at 184 Pergola are within 15% of the total connected load at each property. We further find that the lighting load at each of these properties is controlled dusk-to-dawn lighting for illuminating apartment building exteriors, parking lots, pedestrian walkways, breezeways and landscaping, within the meaning of Schedule AL-1.

We find that Irvine has not met its burden of proof in showing that incidental non-lighting loads at the other five properties are within 15% of total connected loads, because the method used to determine total connected load is not the sum of the rated capacities of all of the customer's equipment that can be connected to SCE's lines.

Accordingly, we find for Irvine as to two of the properties, and we direct SCE to provide service to those two properties under the Schedule AL-1 tariff. We dismiss the complaint as to five other properties, finding that Irvine has failed to meet its burden of proof in showing that these properties qualify for service under the Schedule AL-1 tariff.

Our order today determines that the scope of this proceeding is set forth in the complaint and answer. Our order confirms that Administrative Law Judge (ALJ) Walker is the presiding officer.

Findings of Fact

1. At each of the seven Irvine properties that are the subject of this case, Irvine provides dawn-to-dusk outdoor lighting through a meter that also serves a 24-hour-a-day water pump and motor (the Raypac unit).

2. SCE refused to apply its Outdoor Area Lighting Service rate (Schedule AL-1) to these properties.

3. SCE interprets its Schedule AL-1 tariff to require that the Raypac unit at the respective properties be controlled for dusk-to-dawn operation and not exceed 15% of total connected load.

4. In attempting to show that the Raypac units do not exceed 15% of connected load, Irvine compared the wattage of each Raypac unit and assumed that all other load in an average day of use was for controlled lighting load.

5. Irvine's witness conducted a physical count of each lighting device and each non-lighting device at two of the properties in question, then calculated total connected load based on the rating of each device.

6. SCE calculated lighting and non-lighting loads at each of the properties by turning off breakers to isolate various loads, then counting the actual electricity usage as shown by the meter.

Conclusions of Law

1. The language of Schedule AL-1 is clear and unambiguous in stating that dawn-to-dusk operation applies only to lighting.

2. When tariff language is clear and unambiguous, there is no need to refer to the intent behind the tariff.

3. Ambiguous tariff provisions are to be construed strictly against a utility and any doubt resolved in favor of the customer.

4. Irvine has met its burden of showing that the incidental non-lighting load at two of its properties is within 15% of total connected load, as "connected load" is defined in SCE's tariff.

5. Irvine has not met its burden of showing that the incidental non-lighting load at five of its properties is within 15% of total connected load because the method used to determine total connected load is not the sum of the rated capacities of all of the customer's equipment that can be connected to SCE's lines.

6. SCE should be directed to provide service at 164 Esplanade and at 184 Pergola through the Schedule AL-1 tariff.

7. The complaint should be dismissed as to the five properties where Irvine has failed to meet its burden of showing that incidental non-lighting load is within 15% of total connected load.

8. The scope of this proceeding is set forth in the complaint and answer;

ALJ Walker is designated as the presiding officer.

O R D E R

IT IS ORDERED that:

1. Irvine Apartment Management Company (Irvine) is entitled to electric service under Schedule AL-1 of Southern California Edison Company (SCE) with respect to two properties identified as Account 3-000-0230-95 (164 Esplanade) and Account 3-000-0231-05 (184 Pergola).

2. Irvine is entitled to a refund of rates paid in excess of the Schedule AL-1 tariff at the two properties identified in Ordering Paragraph 1, such refund to be measured from the date of the filing of this complaint (October 19, 2001).

3. The complaint is dismissed as to five other accounts set forth in Case 01-10-019.

4. SCE shall serve Irvine's Account 3-000-0230-95 and Account 3-000-0231-05 through SCE's Outdoor Area Lighting Service tariff (Schedule AL-1), and shall refund to Irvine the amount specified in Ordering Paragraph 2.

5. Case 01-10-019 is closed.

This order is effective today.

Dated _____, at San Francisco, California.